

AO 91 (Rev. 02/09) Criminal Complaint

United States District Court
for the
Western District of New York

United States of America)
)
v.) Case No. 22-MJ-695
)
RAYMOND DIPASQUALE)

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about February 16, 2022, in the county of Livingston in the Western District of New York and elsewhere, the defendant violated 18 U.S.C. § 2252A(a)(5)(B), an offense described as follows:

the defendant violated Title 18, United States Code, Section 2252A(a)(5)(B), by knowingly possessing child pornography material that contains an image of child pornography that has been mailed or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer.

This criminal complaint is based on these facts:

Continued on the attached sheet.

Please see attached affidavit

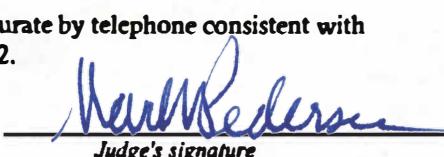


Complainant's Signature

Justin Burnham, S/A HSI
Printed name and title

Affidavit submitted by email/pdf and attested to me as true and accurate by telephone consistent with Fed.R.Crim. P. 4.1 and 4(d) before me this 13th day of October 2022.

Date: October 13, 2022



Judge's signature

City and State: Rochester, New York Hon. Mark W. Pedersen, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF MONROE) SS.:
CITY OF ROCHESTER)

JUSTIN J. BURNHAM, being duly sworn, deposes and states:

1. I am a Special Agent with the Department of Homeland Security, Homeland Security Investigations (HSI). I have been employed as a Special Agent since October 2008. I am currently assigned to the Buffalo, New York office and am responsible for investigating child exploitation and child pornography crimes, to include violations of 18 U.S.C. §§ 2251(a) (production of child pornography); 2252A(a)(2)(A) (receipt and distribution of child pornography); and 2252A(a)(5)(B) (possession of child pornography).

2. This affidavit is submitted in support of a criminal complaint, which alleges that Raymond DIPASQUALE, while in the Western District of New York, did knowingly violate 18 U.S.C. § 2252A(a)(5)(B) (possession and attempted possession child pornography).

3. The information contained in this affidavit is based upon my personal knowledge and investigation of this matter, my training and experience, conversations with other law enforcement officers and witnesses, my review of evidence and records, and my review of computer forensic findings. Because this affidavit is being submitted for the limited purpose of establishing probable cause to secure a criminal complaint, I have not included every fact known to me concerning this investigation. Rather, I have set forth facts necessary to establish probable cause to believe that DIPASQUALE knowingly violated 18 U.S.C. § 2252A(a)(5)(B).

NYSP Receives NCMEC Cybertips Issued by Yahoo

4. The National Center for Missing and Exploited Children (NCMEC) is a nonprofit organization that operates a “CyberTipLine” through which internet and electronic service providers (ESPs) are required to report the presence of child pornography on their platforms. The duties of ESPs and NCMEC to report child exploitation offenses are set forth in 18 U.S.C. § 2258A.

5. If NCMEC receives a cybertip concerning child exploitation, it utilizes information provided by the ESP to determine the general geographic area (such as the state) where the offender is located. NCMEC then forwards the tip to a local law enforcement agency for further investigation. If NCMEC determines that a tip originated in New York State, the cybertip is forwarded to the NYSP Internet Crimes Against Children (ICAC) section, who then forwards the tip to the appropriate NYSP Troop for a full investigation.

6. On or about November 14, 2020, NCMEC received CyberTipLine Report No. 82799905 from Yahoo!, Inc. (Yahoo), also known as Oath Holdings, Inc.

7. This Cybertip indicated that, on November 10, 2020, at approximately 17:58:28 UTC, Yahoo! user “howie paul,” (the SUBJECT ACCOUNT), used the email address of “xterrafleet@yahoo.com” to email five (5) images and one (1) video of suspected child pornography to itself, the SUBJECT ACCOUNT, at the email address of “xterrafleet@yahoo.com. Yahoo advised that they viewed all files and NCMEC classified the files as “apparent child pornography.” According to records provided by Yahoo, the user

of the SUBJECT ACCOUNT used the IP address of 172.101.221.177 on November 10, 2020, to access the SUBJECT ACCOUNT to send the suspected child pornography to themself.

8. This Cybertip also indicated that on November 11, 2020, at approximately 17:49:40 UTC, the user of the SUBJECT ACCOUNT emailed one (1) image and one (1) video of suspected child pornography to itself, the SUBJECT ACCOUNT, at the email address of "xterrafleet@yahoo.com. Yahoo advised that they viewed all files and NCMEC classified the files as "apparent child pornography." According to Yahoo, the user of the SUBJECT ACCOUNT used the IP address of 2600:1017:b107:6460:18fc:1a18:5d65:4462 to access the SUBJECT ACCOUNT to send the suspected child pornography to themself.

9. The image and video files uploaded by the user of the SUBJECT ACCOUNT on November 10, 2020, and November 11, 2020, were viewed by HSI agents and found to meet the federal definition of child pornography. These files are described below:

- a. 1.jpg – This image file depicts a naked, prepubescent minor lying on his back on a white blanket with his erect penis exposed.
- b. 235283107_1 – This image file appears to be identical to the above image file labeled 1.jpg.
- c. 2.jpg – This image file depicts a naked, prepubescent minor standing next to a wooden table. The genitalia of the minor male are exposed and lying on the table.
- d. 235283079_2 – This image file appears to be identical to the above image file labeled 2.jpg.
- e. 2.mp4 – This video file depicts a pubescent, minor male inserting the penis of another pubescent minor male into and out of his mouth.
- f. 235283105_2 – This video file appears to be identical to the above video file labeled 2.mp4.

g. 235283081_1 – This image file depicts a naked pubescent minor male lying on his back on an inflated raft in a body of water. The genitalia of the minor male is exposed to the recording device.

h. 235283094_1 – This image file appears to be identical to the above image file labeled 235283081_1.

10. In August 2021, records were received from Charter Communications in response to a federal summons which showed that the IP address of 172.101.221.177 referenced in paragraph 7 was registered to:

Name: Ray Dipasquale
Address: 5381 Lake Rd., Conesus, NY 14435-9741
Phone number: (585) XXX-1858

11. In August 2021, records in response to a federal summons were received from Verizon which showed that the IP address of 2600:1017:b107:6460:18fc:1a18:5d65:4462, referenced in paragraph 8, was registered to:

Name: Raymond Dipasquale
Phone: (585) XXX-1858

12. On February 11, 2022, the NYSP applied for and received a search warrant for the residence of 5381 West Lake Road, Conesus, NY 14435 (the TARGET RESIDENCE). This search warrant was signed by Livingston County Court Judge, Jennifer Noto. The search warrant authorized the seizure of electronic devices contained within the residence.

13. On February 16, 2022, the NYSP executed the search warrant at the TARGET RESIDENCE. During the execution of the search warrant, the NYSP encountered Raymond DIPASQUELE at the front door of the TARGET RESIDENCE. DIPASQUELE admitted to being the owner of the cell phone and laptop computer which were found on the bed in his

bedroom. After waiving his *Miranda* Rights DIPASQUALE denied possessing or uploading any images depicting the sexual performance of a child. DIPASQUALE advised that he lived at the residence with his wife, K.D. and that his son was not living at the residence at the time that the images in question were uploaded to Yahoo's servers.

14. The wife of Raymond DIPASQUALE, K.D., was interviewed at the TARGET RESIDENCE. K.D. advised that she lives at the residence with her husband, Raymond DIPASQUALE, and confirmed that their son does not live at the residence and only visits on occasion. K.D. denied owning, using, or knowing the content of the electronic devices seized by the NYSP during the execution of the search warrant, nor is she familiar with the email address: xterrafleet@yahoo.com or the Yahoo! username "howie paul."

15. Several electronic devices were seized during the search warrant and were later analyzed by the NYSP Computer Crimes Unit (CCU). According to the CCU, the cellular telephone found on DIPASQUALE's bed, an Apple iPhone Model A1921 bearing serial number F2LYNDFFKPHG, (the SUBJECT PHONE), was found to contain approximately 598 images and 161 videos depicting child pornography. These images and videos were primarily located in the following file path: Ray's iPhone/mobile/containers/Data/Applications/com.locker.app. The email address xterrafleet@yahoo.com and the username Howie Paul were also found to be used on this device. These are the identifiers in the Cybertip submitted by Yahoo as documented in paragraph 7 and 8. Some of the images/videos found in the SUBJECT PHONE included

images depicting anal sex with minors. Three examples of the child pornography found on the SUBJECT PHONE include the following files:

- a. 1EDCD50B-7B66-49CE-8075-914CB74704C3.jpeg – This image file depicts two, naked, prepubescent minors lying on a blue blanket. The penis of the minor male is seen being inserted into the mouth of the other minor.
- b. 2AC25137-648F-4D66-A59A-14B20DCEC7E0.jpeg – This image file depicts four, naked, prepubescent minor males lying on light blue blanket. One of the minor males is seen lying on top of the exposed buttocks and back of another minor male in what appears to be an act of anal sex. The third minor male is lying on his back while the fourth minor male is sitting on the pubic area of the third minor male in what appears to be an act of anal sex. The genitalia of the third minor male is exposed to the recording device.
- c. 2CC335D3-70DA-485A-8B0C-1D72FF9D6253.MOV – This video file depicts a naked, prepubescent minor male lying a bed while using his hands to stroke his penis.

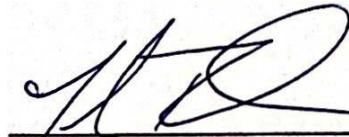
16. Open-source databases show that the SUBJECT PHONE was manufactured in China and has therefore traveled in interstate and foreign commerce.

17. A review of Item 2, a Lenovo laptop computer (the SUBJECT COMPUTER) found on DIPASQUALE's bed which he claimed to own, was found to contain approximately three (3) images of child pornography.

18. On September 30, 2022, DIPASQUALE was arrested by the NYSP and charged in Livingston County for three (3) violations of NYS penal law section 263.16, possession of a sexual performance by a child.

CONCLUSION

19. Based on the foregoing, I submit that there is probable cause to believe that Raymond DIPASQUALE, while in the Western District of New York, did knowingly violate 18 U.S.C. § 2252A(a)(5)(B) (possession and attempted possession child pornography).



JUSTIN BURNHAM
Special Agent
Homeland Security Investigations

Affidavit submitted electronically by email in .pdf format. Oath administered, and contents and signature, attested to me as true and accurate telephonically pursuant to Fed. R. Crim. P. 4.1 and 4(d) on this 13th day of October 2022.



MARK W. PEDERSEN
United States Magistrate Judge